

1                   **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
2                   **IN AND FOR THE COUNTY OF APACHE**  
3

4       **IN RE THE GENERAL ADJUDICATION**  
5       **OF ALL RIGHTS TO USE WATER IN**  
6       **THE LITTLE COLORADO RIVER**  
7       **SYSTEM AND SOURCE**

No. 6417

**ZUNI INDIAN TRIBE WATER RIGHTS  
SETTLEMENT JUDGMENT AND  
DECREE**

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10       The Court has considered the Zuni Indian Tribe Water Rights Settlement Agreement in the  
11 Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), permanently resolving  
12 certain water rights claims of the Zuni Indian Tribe on behalf of itself and its members (hereinafter  
13 referred to as the "Tribe") and of the United States for the benefit of the Tribe and its members that  
14 are subject to the Court's jurisdiction in this case, a copy of which Settlement Agreement is attached  
15 as Exhibit 1 to the Stipulation and Request for Entry of Judgment and Decree.

16       The Court has also considered the Water Right, Entitlement and Perpetual Delivery  
17 Agreement between the Lyman Water Company, the Zuni Indian Tribe and the United States for the  
18 benefit of the Tribe, dated February 27, 2006 ("Entitlement and Delivery Agreement"), a copy of  
19 which Entitlement and Delivery Agreement is attached as Exhibit 2 to the Stipulation and Request for  
20 Entry of Judgment and Decree.

21       The Court finds that the conditions precedent to the enforcement of the Settlement Agreement,  
22 set forth in subparagraphs 3.1.A – 3.1.J of the Settlement Agreement, have been satisfied.

23       The Court recognizes the decision of the Arizona Court of Appeals in *St. Johns Irrigation and*  
24 *Ditch Company v. Arizona Water Commission*, 127 Ariz. 350, 621 P.2d 37 (App. 1980), that  
25 presently, the waters of the Upper Little Colorado River watershed have been fully appropriated by  
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1 reason of the Norviel Decree and there is no additional water available for appropriation in the  
2 Norviel Decree Area.

3 NOW THEREFORE, it is hereby adjudged and decreed as follows:

4 1. The terms used in this Judgment and Decree shall be defined as stated in the  
5 Settlement Agreement.

6 2. The Settlement Agreement is hereby approved.

7 3. Pursuant to the terms of subparagraph 4.6.B of the Settlement Agreement and the  
8 abstract attached to the Settlement Agreement as Exhibit 4.6.B, the Tribe and the United States have  
9 the permanent right to the on-Reservation use of a total of 5,500 AFA of surface water from the Little  
10 Colorado River. The priority date associated with the right of the Tribe and the United States for the  
11 benefit of the Tribe to this surface water is August 28, 1984.

12 4 The Zuni Tribe shall apply to sever and transfer any surface water rights it acquires  
13 pursuant to subparagraph 4.6.D(5) of the Settlement Agreement.

14 5. The Entitlement and Delivery Agreement is hereby approved.

15 6. Pursuant to the Entitlement and Delivery Agreement, the Tribe and the United States  
16 for the benefit of the Tribe shall hold all right, title and interest to a permanent water right and  
17 entitlement to receive, on an annual basis, twelve percent (12%) of LWC Delivered Water as defined  
18 in Paragraph 5 of the Entitlement and Delivery Agreement, at the priority date of Lyman Reservoir  
19 under the Norviel Decree. Twelve percent (12%) of LWC Delivered Water has historically provided  
20 972 AFA of water. Nothing in the Entitlement and Delivery Agreement restricts, enlarges or  
21 otherwise determines the subject matter jurisdiction of any state or federal court.

22 7. Except as described in paragraph 5.3 of the Settlement Agreement, relating to the Zuni  
23 Tribe's use of 1,500 AFA of underground water, the Settlement Agreement does not create any vested  
24 right to groundwater under state law, or any priority to the use of groundwater that would be superior  
25 to any other right or use of groundwater under state law, whether through the Settlement Agreement,  
26 by incorporation of any abstract, agreement or stipulation prepared under the Settlement Agreement,  
27 or through Congressional legislation approving, confirming or ratifying the Settlement Agreement or

1 any abstract, agreement or stipulation prepared under the Settlement Agreement. Notwithstanding the  
2 preceding sentence, the rights of parties to the agreements referred to in paragraph 5.8 of the  
3 Settlement Agreement, as among themselves, shall be as stated in those agreements.

4 8. In accordance with the terms of Article 8 of the Settlement Agreement and section 8(b)  
5 of the Act, water rights made available under the Settlement Agreement and used on the Zuni Heaven  
6 Reservation shall not be subject to forfeiture or abandonment. State law does not apply to water uses  
7 on the Reservation. Furthermore, the State of Arizona may not regulate or tax this water or uses of  
8 this water, but this Court or the Norviel Decree Court may assess administrative fees for delivery of  
9 this water. Subject to paragraph 7.7 of the Settlement Agreement, the Zuni Indian Tribe and the  
10 United States shall use water made available to them under the Settlement Agreement on the Zuni  
11 Heaven Reservation for any use they deem appropriate. The Zuni Tribe and the United States shall  
12 not, however, sell, lease, transfer, or transport water made available to it for use on the Zuni Heaven  
13 Reservation to any other place; provided, however, that water may be severed and transferred from  
14 the Reservation to other Zuni Lands, if the severance and transfer is accomplished in accordance with  
15 state law. Once transferred to any lands held in fee, that water shall be subject to state law.

16 9. Surface water rights in the Eastern LCR basin shall be determined in accordance with  
17 Article 4 of the Settlement Agreement.

18 10. No new applications to appropriate surface water in the Norviel Decree Area shall be  
19 filed for uses commenced after the Effective Date of the Settlement Agreement, unless those new  
20 surface water uses are located in closed basins.

21 11. No new reservoirs or dams shall be constructed on the LCR between Lyman Dam and  
22 the western boundary of the Zuni Heaven Reservation without the written consent of the Tribe unless

23 A. the new dam or reservoir is used for *de minimis* uses (as defined by the  
24 Settlement Agreement), effluent impoundments, tailwater ponds, or impoundments of  
25 underground water;

26 B. the reservoir is wholly contained within a closed basin;  
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1 C. the reservoir has no permanent water storage and is operated solely for flood  
2 control purposes; or

3 D. the water stored in the new reservoir results from a change of use, change in  
4 point of diversion, or severance and transfer; provided, however, that the Zuni Tribe retains  
5 any state-law objections to severance and transfers.

6 12. Zion Dam, formerly known as Udall Reservoir, may be repaired or rebuilt only with  
7 the written consent of the Tribe.


8 13. All parties to the Little Colorado River Adjudication and all water users in the Little  
9 Colorado River Basin may enforce the provisions of Article 4, Article 5 and Article 11 of the  
10 Settlement Agreement, according to the terms of those Articles.

11 14. In exchange for the benefits realized under the Settlement Agreement and as  
12 authorized by the Act, the Parties have executed Waivers and Releases of Claims for water rights and  
13 injuries to water rights, which are attached hereto as Exhibits 1, 2, 3, 4 and 5 and which are by this  
14 reference incorporated into this Judgment and Decree. The Judgment and Decree is binding upon all  
15 parties to the Little Colorado River Adjudication except to the extent that the express terms of the  
16 Settlement Agreement provide that non-signing parties will not be bound by the Settlement  
17 Agreement.

18 15. Nothing in this Judgment and Decree, the Settlement Agreement, or the Entitlement  
19 and Delivery Agreement quantifies or otherwise affects the water rights or entitlements to water of  
20 any Indian tribe, band or community, or the United States for the benefit of any Indian tribe, band or  
21 community, other than the Zuni Indian Tribe and the United States for the benefit of the Zuni Tribe.

22 16. This Court retains jurisdiction over this matter for enforcement of this Judgment and  
23 Decree, the Settlement Agreement, and the Entitlement and Delivery Agreement including, but not  
24 limited to, the entry of injunctions, restraining orders or other remedies under law or equity.

25 DATED this 27 day of November, 2006.

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27 Judge of the Superior Court